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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 453

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVERS CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS,
Third Party Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants, Respondents.**

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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July 29, 1966

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

TO: The Honorable, The Chief Justice, and Associate Justices of the Supreme Court of the United States:

Joseph P. Ruth, the petitioner herein, prays that writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above-entitled case on June 14, 1966.

Opinions Below

The opinion of the Circuit Court of Appeals for the Tenth Circuit is unreported, and is contained in letter from the Clerk dated June 14, 1966.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on June 1, 1966. Rehearing was denied on June 14, 1966. The jurisdiction of the Court is invoked under 28 U.S.C. §1254(1), Revised Rule 23.

My patent No. 2,611,680 (Exhibit 1) was held valid in the United States District Court for the Southern Jurisdiction (Sixth Circuit) by Judge Druffel on September 18, 1959 (Exhibit 2), and was held invalid on October 18, 1963, by Judge Christenson in the United States District Court for the District of Colorado. Case No. 8698.

My attorneys prevented me from making before Judge Christenson in Denver the same demonstration of the evidence of invention that I presented to Judge Druffel in Cincinnati (Exhibit 3).

Exhibit 4 is the Court Reporter's record of the conduct of Exhibit "59" in Cincinnati, and Exhibit 5 is the graphic representation of Exhibit "59" which would have made known to Judge Christenson the health hazard that results from the 50 pounds of toxic nitric acid gas, inherent in all diesel bus exhaust, which each diesel bus in city transit service discharges each day in city air. From the exhaust of any General Motors diesel bus, I can by my

conditioner method patent No. 2,611,680, convert the 50 gallons of water in the MRX-40-S conditioner, the size for the 6-71 General Motors diesel engine, to 2.65 pH nitric acid liquid (HNO_3) in ten minutes. General Motors Corporation, which builds 90% of the diesel power used in inter- and intra-city transit service, controls all of the major newspapers in the United States by the $114 million it spends annually for advertising, and hides this deadly characteristic of diesel bus exhaust by corrupting pseudo-scientists and public health officials, who feloniously attribute the blinding and toxic smog that diesel exhaust creates in our cities to the public's gasoline automobiles, the trash they burn, and the cigarettes they smoke. See letter to Joseph Polomba of 8/30/61 (Exhibit 6), and letter to Scientific American dated March 27, 1963 (Exhibit 7).

The demonstration of the operation of my patent No. 2,611,680 by Exhibits 4 and 5 herein, prohibited by my lawyers, would have shown that it is the *nitric acid gas inherent in diesel exhaust* and put out by the preponderance of General Motors diesel power in city transit service, and not the public's autos and trashburners and cigarettes, which is responsible for the city air pollution debacle General Motors diesel power has wrought on the public health and which their public relations adroitly lay onto the public (Exhibits 6 and 7).

My method patent detoxifies the anhydrous nitric acid gas in diesel exhaust from hundreds of General Motors 6-71 diesel engines in order that they may be used safely underground (Exhibit 8).

Questions Presented

This writ, if granted, will force the disclosure of the hidden public health hazard resulting from the indiscriminate discharge of the 0.1% of toxic anhydrous nitric acid gas inherent in diesel bus exhaust (Exhibit 9), which by industrial hygienists is rated 20 times more toxic than is the carbon monoxide in gasoline automobile exhaust (Exhibit 10).

By the same demonstration, in the same machine, using the same size gasoline engine's exhaust, it will be shown that this smog-forming toxic nitric acid gas is not present in normal gasoline engine exhaust. In fact, there is no acid in such exhaust.

It will also be shown that General Motors knew, in April of 1951 (Exhibit 11), of this deadly characteristic of their 6-71 diesel bus engine exhaust, but persisted in selling buses for use in city transit service with their 6-71 diesel engine, attributing the same death and smog they brought to our cities (Exhibit 11) it created in the Idarado mine, and which they now, by pseudo press releases (Exhibit 7), attribute to the public's gasoline automobiles, the trash they burn, and the cigarettes they smoke. With this knowledge about the deadly toxic nitric acid gas inherent in their diesel bus engine's exhaust, General Motors, by control of the press, has made an enigma out of the city air pollution which their diesel buses have wrought on our cities, thereby forcing our government and the public to spend billions in a futile effort to escape the silent killer that stalks our streets and which my Cincinnati Exhibit "59" would show comes from their diesel bus.

The 400% rise in emphysema in our cities dates from the displacement of the electric street car by General Motors diesel buses. The destruction to the lungs of our children, 75% of whom live in our cities, by this nitric acid gas from General Motors diesel buses will prevent their lungs from ever reaching full development. The honest doctor is helpless in this General Motors-made dilemma, as recognized by Dr. Fredrick G. Burke, Professor of Pediatrics at Georgetown University, who says: "An entirely new, broad advance in the field of chronic respiratory ailments in children is needed if significant medical breakthroughs are to be achieved." Obviously, he is unaware of the 3.93 P.P.M. of NO_2 in Los Angeles air 24 hours per day (Exhibit 12). If miners can't live in toxic oxides of nitrogen for 8 hours per day, how can children in cities do it for 24 hours per day? Detoxifying all of the diesel exhaust in our cities, or outlawing diesel power in our cities as the Communists do, is the only way to restore our cities' air as it was before the advent of the General Motors diesel bus in our cities (Exhibit 13).

From my certified copy of Colorado Industrial Hygienist Jack Torrey's report (Exhibit 11), wherein he testified that from his analysis of the Idarado mine air the Idarado mine air contained from three to five times tolerance of oxides of nitrogen, and from certified death certificates contained in Exhibit 6 proving that he was right, I decided to expose General Motors, who also had a copy of the same report (Exhibit 11) in 1951, but used it to hide this deadly constituent (anhydrous nitric acid gas) inherent in their diesel bus exhaust (Exhibit 9) from the public by corrupting doctors, public health officials, and pseudo-scientists as disclosed in Exhibits 6, 7, 23, and 16,

being letters to Polomba, Scientific American, Governor Ed C. Johnson, and Mrs. Jack Foster.

This group, knowing that General Motors controlled the press, were not fearful of being exposed, indicted every aspect of combustion by the public in cities as being the cause of the toxic, deadly, anhydrous nitric acid air pollution and smog (Exhibit 12) being created, with impurity, by General Motors diesel bus engines in our cities. In addition, their lobbyists induced our academic Congress to appropriate millions to look for the cause of the air pollution brought to our cities, with their full knowledge, by General Motors diesel buses and railroad locomotives (Exhibits 10, 11, and 12).

I bought a 10-horsepower Wisconsin gasoline engine, and for one hour the exhaust was run into Exhibit "59" and *no acid* was created in the conditioner water—it remained neutral. This engine also had the fumes from the oil filler plug connected to the carburetor, therefore the gasoline engine exhaust contained all of the supposedly deleterious gases from the public's gasoline automobile engine that General Motors' pseudo-scientists, in phony articles, said was coming from their autos, and this test shows there was none. The same conditioner recovered, and, when calcite was added, detoxified the 0.1% of toxic anhydrous nitric acid gas inherent in all diesel exhaust and absent from gasoline automobile exhaust.

Exhibit 20 shows that I had made arrangements with a competent chemist to prove to the Court in my forthcoming trial that diesel exhaust was laden with toxic nitric acid gas and that my method patent detoxified this toxic

gas inherent in diesel exhaust. My lawyers refused to permit me to make this complete physical and chemical demonstration of Exhibit "59" to the Denver Court.

My attorneys, Ed Geer, Bruce Ownbey, and David Manter, conspired to prevent me from making the demonstration of my method patent No. 2,611,680, which discloses how this nitric acid gas is absorbed from diesel exhaust and then detoxified. Exhibits 3, 4, and 5 are, respectively, exhibits explaining the circulation, the absorption, neutralization of the acid principle to Judge Druffel; the exact copy of the Court Reporter's notes of the test; and the graph (Exhibit 5) depicting the test step-by-step on a chart; and, last, a picture (Exhibit 14) of Cincinnati Exhibit "S," the machine in which the test was conducted before Judge Druffel.

Judge Druffel held this patent valid September 18, 1959 (Exhibit 2), and it is valid in every state except Colorado; Judge Christenson held it invalid in Colorado October 18, 1963, and this was because I was not permitted by my attorneys to make the same physical and chemical presentation of Exhibit "59," exemplifying the chemical method of my patent No. 2,611,680 (Exhibit 1) to Judge Christenson in the Tenth Circuit that I made before Judge Druffel of the Sixth Circuit in Cincinnati.

We are spending billions to fight aggression in Viet Nam. What aggression on humanity could be worse than General Motors selling diesel buses that Exhibit "59" would show are polluting our cities' air with anhydrous nitric acid gas, the effects of which doctors recognize as lung-heart disease and say is destroying our health, and

by chicanery and control of the press General Motors is placing their diesel bus air pollution debacle on the shoulders of the public. What is worse, these pseudo-scientists, on high salaries paid by the public, are making an enigma out of the nitric acid diesel exhaust air pollution from G.M. diesel buses, and have the public spending billions of public money looking for what they are knowingly hiding for General Motors (Exhibits 6 and 7). Colorado Industrial Hygienist Jacoe refuses to analyze and report the toxic oxides of nitrogen in General Motors diesel bus exhaust on the Denver streets.

These two tests I suggested to be demonstrated to the Court would show the untold numbers of diesel buses to be discharging tons of toxic nitric acid gas each day in our cities' air, which could be detoxified, and would show that the public's gasoline autos are innocent.

The conclusion would be that it is the deadly anhydrous nitric acid gas inherent in diesel exhaust which since the advent of the diesel bus permeates our city air, and not cigarette smoking, which causes the 400% rise in emphysema and lung cancer in our cities; it is, rather the 3.93 P.P.M. of oxides of nitrogen inhaled with the cigarette smoke (Exhibit 12).

My lawyers unquestionably sacrificed 30% of $8 million, the amount Blue River saved by using diesel instead of electric haulage (Exhibit 18), when they refused to permit me to demonstrate Exhibit "59" to validate my patent. They sacrificed the public's health when they refused to permit me to show that it was the anhydrous nitric acid gas in General Motors diesel engines in city transit service, and not the public's gasoline autos, that engendered

the toxic air pollution we are now, by General Motors' control of the press, forced to live with. Thirty per cent of $8 million is $2,400,000. What would General Motors pay to keep the public ignorant of the fact that it is nitric acid in their diesel exhaust, and not the cigarettes the public smoke or the autos they drive, which has brought this air pollution debacle to our cities?

More important than a war to guarantee the Vietnamese the right to vote is the U. S. public's right to know where the toxicity in our cities' air comes from that elicited this hopeless, pathetic editorial in the New York Times: "Even the layman can draw one basic conclusion: The air we breathe is killing us." The United States Supreme Court can by Exhibit "59" inform the U. S. public that the diesel engines in city transit service are polluting our cities' air each day with tons of anhydrous nitric acid gas.

In the history of man it has been a simple truth that corruption ends when action by an aroused citizenry begins.

The United States Supreme Court can correct this miscarriage of justice.

Statutes Involved

I feel that this writ will force the disclosure of a public health hazard from diesel exhaust that is hidden from the public by my attorneys' refusal to permit me to make the same demonstration of my chemical method patent to Judge Christenson in the Tenth Circuit at Denver, who

held my patent invalid, as was made before Judge Druffel in the Sixth Circuit, who held the same patent valid. By this impasse, my constitutional right to a fair trial under Article V of our Constitution was violated, and I was not accorded due process of law.

Statement

I did not appeal from Judge Christenson's decision of October 18, 1964, because the Tenth Circuit Court of Appeals would not have before it the evidence of Exhibit "59" which Judge Druffel, in Cincinnati, had before him when he held my patent was valid.

I felt that I had a case against Utah Construction and Mining Company, who made the $8 million excavation for NORAD in Cheyenne Mountain, who by interrogatories had admitted infringement; and that in suit against them I would be able to demonstrate my Exhibit "59." However, this case was dropped when Judge Christenson held my patent invalid, because my attorneys claimed I had signed in Mr. Geer's office a stipulation that I would not pursue this case if I lost my case against Blue River Constructors. I misplaced, but recently found, the *agreement* (Exhibit 15) that I maintained I had signed in Mr. Ed Geer's office five days before the trial against Blue River Constructors. This was an agreement between my lawyers and me, and not a stipulation to drop the case against Utah Construction and Mining Company, Civil Action No. 7899. This agreement (Exhibit 15) is prima facie evidence that my attorneys had a 30% interest in all moneys recovered for damages and infringement of my patent No. 2,611,680.

DIESEL HAULAGE IS 60% MORE EFFICIENT UNDERGROUND THAN ELECTRIC HAULAGE. Based on using 23,000 volts for long distance power transmission, with transformers every few miles to cut the voltage to 440 volts which was the permissible voltage and that required by the mine trolley locomotive that was to furnish haulage for the 23-mile Denver Water Board tunnel, Morrison-Knutson and Peter Kiewit bid $41 million to drive the 23-mile Denver Water Board tunnel.

Blue River Constructors, composed of several multi-million dollar contracting firms, bid $33 million, because their superintendent, Ted Adams, was in the same area when in 1951 my diesel exhaust gas conditioner on diesel mine locomotives increased the tunnel footage driven using electric mine locomotives, from 24 feet to 48 feet in a 24-hour work day. This amounted to an increase of 57% in one day's footage driven with the same crew (Exhibit 19). It costs over $1,000 per day to pay a tunnel crew.

In 1953 the U. S. Bureau of Mines purchased a duplicate of the mine locomotives I had sold to the U. S. Steel Corporation for use in its Tennessee zinc mines. From their tests they claimed that my limestone conditioner did not take out the .1% of toxic oxides of nitrogen from diesel engine exhaust. If this was true, obviously my patent was invalid for lack of utility. However, they found by analysis and kept secret from me that my method detoxified the toxic oxides of nitrogen, NO_2, in diesel exhaust to non-toxic oxides of nitrogen, $Ca(NO_3)_2$, but did not take them out of the exhaust.

The U. S. Bureau of Mines, Safety Division, after tests in their Pittsburgh laboratory, refused in 1953 to approve for me my diesel exhaust gas conditioning method

for use underground, but they approved a Chinese copy of my method patent to be used by Blue River Constructors on fourteen Plymouth diesel locomotives they purchased in 1957 for use in the 23-mile Denver Water Board tunnel.

The Blue River group of six multi-million dollar contractors who saved $8 million in driving the 23-mile tunnel for the Denver Water Board using Plymouth diesel locomotives with my limestone conditioners approved by the U. S. Bureau of Mines, against the $41 million bid of Morrison-Knutson, et al, using electric mine locomotive haulage, were guilty in 1957 of willful infringement, aided and abetted by the U. S. Bureau of Mines, which said my patent was invalid for lack of utility because it did not take out the oxides of nitrogen, and hoped by their testimony to get my patent held invalid in the forthcoming trial before Judge Druffel in 1959.

Now, my three lawyers, with a 30% interest (Exhibit 15) in the $8 million damages which I felt an accounting would show if my patent should be held valid in this, the Tenth Circuit, refused to permit me to make the same demonstration of my Exhibit "59," disclosing the detoxification of diesel exhaust, which evidence was uncontradicted by cross examination and unanticipated by the cited prior art in the Sixth Circuit, and in the Tenth Circuit Exhibit "59" would have sustained its validity and would also have refuted any claimed anticipation, had they permitted me to demonstrate Exhibit "59" in its entirety to the Court as I had done in Cincinnati.

I appealed the Utah Construction Company case, No. 7899, and Chief Judge Murrah said to me, "Mr. Ruth, we want to help you. You are in the wrong court. You see, we have no Court Reporter here; we do not swear wit-

nesses; we do not take testimony. You get a lawyer and go back to the District Court."

Again, I went to three lawyers who in turn refused to take the case, the same as the first set refused, because, they said, it was the prerogative of lawyers to decide what evidence was to be presented to the courts. If this holds, lawyers can usurp the prerogative of judges.

I felt that my lawyers had no right to withhold the evidence of Exhibit "59" which Judge Druffel witnessed and from which he held my patent valid in the Sixth Circuit, from Judge Christenson who in the Tenth Circuit *was permitted to see only the mechanical patent* the validity of which Judge Druffel ruled I had not sustained (Exhibit 2). By withholding this demonstration of my Exhibit "59," my constitutional right to a fair trial by due process of law was denied me by my lawyers, and I decided to present the case myself, to the best of my ability, in the interest of humanity, by exposing the nitric acid in diesel bus exhaust that my lawyers, in effect, were hiding from the court and the public.

Reasons For Granting This Writ

The District Court in Cincinnati held my patent No. 2,611,680 valid after witnessing Exhibit "59." At the outset, this demonstration in Cincinnati was to be run in a 10-horsepower replica of my large commercial conditioner (Exhibit "59") but with a glass side. The unit was connected to the exhaust of a 10-horsepower diesel engine. My Exhibit "60" was made the same size as my Exhibit "59" with glass sides, from the drawing the Eagle-Picher

Company gave me of its scrubber, designated as their Exhibit "S," at the trial in Cincinnati, which I contended infringed my patent No. 2,611,680.

Eagle-Picher's counsel insisted I must demonstrate infringement of my method patent in their Exhibit "S," which was my Exhibit "60," the herein Exhibit 14. Accordingly, I disconnected from my Exhibit "59" the exhaust pipe from the 10-horsepower diesel engine and connected it to their Exhibit "S" and my Exhibit "60." Consequently, thenceforth, my Exhibit "59" was demonstrated in their Exhibit "S," and it is so noted by the Reporter, whose transcript (Exhibit 4) states as follows:

> Exhibit "S"—Model of defs. machine (2) connecter diesel Ex to Ex "S."
>
> 08.00—the test was started at 8:00 A.M. The water was saturated with the nitric acid from the diesel exhaust to pH 2.65 at 08.38.
>
> Took sample of water from Ex "S" and took pH reading—reading 2.65.

At pH 2.65 the conditioner water was saturated with nitric acid gas—*the water could absorb no more nitric acid gas from the diesel exhaust.* At this point, the nitric acid gas in the diesel exhaust went out as an acid water vapor as fast as it came in. Exhibit 4 continues:

> At 8.46 put calcite in Ex "S" without removing water and while Ex "S" is continued to be operated—took movie scenes of insertion of calcite through outlet of Ex "S."
>
> 09.32—Took sample of water from Ex "S"—took pH reading—reading 6.2—cleaned electrodes.

The calcite revivified the water's ability to again absorb toxic nitric acid gas from diesel exhaust, by converting the chemically soluble toxic nitric acid gas in the conditioner water to non-toxic calcium nitrate, $Ca(NO_3)_2 + 4\ H_20$.

The following quotation from page 13 of Judge Christenson's decision shows how the absence of the above demonstration of Exhibit "59" affected his decision:

> There was evidence from a chemical engineer, Dr. Gary, tending to establish that the removal of such constituents can be better accomplished with a chemically inert, rather than an alkaline, diffusing medium such as limestone (or calcite). The test upon which the conclusion of defendants' expert was based, however, was over a short period of time and involved old equipment the efficiency of which was in question. Dr. Gary was asked what he understood the Ruth patent in suit to teach regarding the removal of acid constituents. He replied, "Nothing." It was not until the question was rephrased to ask him, "What does the patent purport to teach with regard to the removal of acidic [sic] constituents?" that he replied, "that by using an alkaline medium, a higher percentage of the acidic constituents would be removed." Dr. Gary then further indicated that this was not true in fact and that in the context of the patent it was not according to accepted chemical theory.

Exhibit "59" would have blasted this dialogue.

Had my attorneys permitted me to demonstrate Exhibit "59" to Judge Christenson in Eagle-Picher's Ex-

hibit "S," as I did to Judge Druffel, he would have known:

1. Diesel exhaust was laden with nitric acid gas; and the public, as well as the Judge, would have known that diesel combustion engenders toxic nitric acid gas in their cities.

2. The conditioner chemically absorbs diesel exhaust nitric acid gas to the saturation point in water; this saturation amounts to pH 2.65, and thereafter the water can absorb no more NO_2 from the diesel engine exhaust.

3. To the pH 2.65 saturated nitric acid water in the conditioner was added an alkaline medium identical chemically to limestone (calcite); this revivified the conditioner water, and the nitric acid gas now coming in with the diesel exhaust was again being absorbed, as indicated by the higher pH 3.1; this incoming nitric acid gas, together with the prior 2.65 saturation of nitric acid gas in the conditioner water was gradually neutralized up to pH 6.2. (Expert Gary did not know how this method detoxified diesel exhaust, in the absence of Exhibit 5, depicting Exhibit "59.")

The calcite revivified the water's ability after saturation to again absorb the nitric acid from the diesel engine exhaust. This is the invention. Without limestone, or calcite, the saturated nitric acid as acid water vapor would go out as a nitric acid water vapor as fast as it came in with the diesel exhaust. By thus revivifying the water with an alkaline medium, the soluble acid was at the same time converted to the neutral non-toxic salt, $Ca(NO_3)_2$ +

4 H_2O, thereby detoxifying the diesel exhaust as fast as the conditioner water absorbed the nitric acid gas.

This, Dr. Gary says, "was not according to accepted chemical theory." This is not true, but by my lawyers' preventing me from running Exhibit "59" I had no way in the record to prove it, and nothing on which to base an appeal.

It appears to me that my lawyers, by preventing me from demonstrating Exhibit "59," have made it possible for the respondents surreptitiously to hide from the court and from the public the tons of synthetic toxic anhydrous nitric acid gas (NO_2) discharged daily into city air by General Motors railroad diesel locomotives and their diesel buses used in city transit service.

I studied civics in school, and I was taught that corporations were formed by groups of people whose combined resources created something that would manifestly benefit all of the people, which as individuals alone they could not accomplish. For their altruistic investment, they get a dividend. Now in the United States we have a corporation that reverses this precept. General Motors found out in April of 1951 that deaths in the Idarado mine were caused in the three years past by the toxic oxides of nitrogen from their diesel engine exhaust. This report (Exhibit 11), made in April, 1951, by Jack Torrey, of the Colorado Department of Public Health, on cross examination, page 12 of his report, admits the miners were permitted to work and die in air containing from three to five times tolerance of oxides of nitrogen (NO_2), anhydrous nitric acid gas. With this knowledge, Dr. Cleere,

head of the Colorado Department of Public Health (Exhibit 23), was duty-bound to shut down the Idarado mine in 1951. This would have notified the State of Colorado and the State of California where Los Angeles was displacing its electric street cars with General Motors diesel buses, that diesel exhaust was laden with a unique, toxic, smog-forming nitric acid gas, called oxides of nitrogen. This would also have notified public health departments throughout the United States, and the use of diesel power in city transit service would have been ostracized. Jack Torrey testified the miners (those who did not quit in 10 days) had for years worked in mine air five times tolerance of oxides of nitrogen, but none of the 14 cases before the Colorado Industrial Commission were compensated, nor were those who died outside the mine from oxides of nitrogen, emphysema caused by breathing the low concentrations of oxides of nitrogen in the mine over an extended period. See page 5, Exhibit 16, and the report of postmortem of Irving J. Ivie, Exhibit 17. Dr. Good testified the labor turnover was great, or more would have died.

In Los Angeles, in 1952, when the General Motors diesel buses were displacing the electric street cars, the same toxic, blinding smog beset that city. See C. L. Hamblin letter of 8/12/60, Exhibit 6. Jack Torrey, the only man with first-hand *analytical* knowledge that General Motors 6-71 diesel bus engines engendered in the Idarado mine toxic anhydrous nitric acid and blinding smog, went out to Los Angeles for two years, apparently not to warn the public about the toxic, smog-forming oxides of nitrogen inherent in General Motors diesel bus engine exhaust, because the press releases by scientists and health officials in California and Los Angeles from that time on attributed the cause of this new smog to inversion, to

the gasoline fumes that came out of a gasoline truck when it was again filled with gasoline, to olefins, to auto exhaust, ozone, trashburners, and cigarettes. You will note that the press is silent about the 0.1% of toxic oxides of nitrogen inherent in General Motors diesel bus exhaust; a diesel bus in a day's operation will discharge 50 pounds of this toxic gas in its exhaust into a city's air (this is proven by Exhibit "59"). It is obvious that Jack Torrey went out to California to corrupt public health officials and scientists and tell them what to hide, which is obviously the oxides of nitrogen and smog engendered from General Motors diesel bus engines in Los Angeles as it was in the Idarado mine.

Here we have a corporation organized to make money by the sale of diesel power in city transit service and which destroys the public's health, buncos them out of their money, and by phony press releases makes an enigma out of diesel smog, costing our unwary public billions of dollars for the witch hunt set up by General Motors public relations to hunt for the cause of the smog damage.

The United States Supreme Court can, by ordering Exhibit "59" demonstrated to the District Court in the Tenth Circuit, subject to scrutiny and cross examination, as it was demonstrated in the Sixth Circuit, disclose to the court and to the public that one-tenth of one per cent of diesel exhaust is toxic, smog-forming, anhydrous nitric acid gas; that this gas is unique to diesel engine combustion and is not present in gasoline automobile combustion; and that the nitric acid gas in diesel exhaust is 20 times more toxic than carbon monoxide in automobile exhaust

(Exhibit 10). With this knowledge, which the United States press must follow as it comes from a Federal Court, an enlightened public will eradicate this phase of deadly air pollution, which is substantially responsible for the 400% rise in emphysema, lung cancer, and bronchial ailments in children.

In the U. S. Bureau of Mines Information Circular Bulletin I.C. 7222 dated in 1942 (Exhibit 16) is the following statement about oxides of nitrogen in diesel engine exhaust:

> The controlling noxious gases are nitrogen oxides, which, under currently accepted tolerance limits, are 10 times more deadly than carbon monoxide.
>
> Although acute poisoning from toxic gases may be fatal, nevertheless the most important hygienic risk from any poisonous substance is that which results from constant and repeated exposure.

Exhibit 9 shows G.M. diesel 6-71 exhaust to contain 954 parts per million of oxides of nitrogen. Exhibit 12 shows Los Angeles air to contain 3.93 P.P.M. of oxides of nitrogen.

With the knowledge of the death and destruction wrought in the Idarado mine from 1947 to 1952 by the oxides of nitrogen in diesel exhaust which confirmed their findings about diesel exhaust in their I.C. 7222 Bulletin in 1942, they testified and permitted General Motors to put in their diesel bus sales manual the following (Exhibit 6):

The report of the Bureau of Mines on the GM diesel exhaust definitely shows that there is [sic] no harmful parts in same. The excerpt of testimony before Illinois Commerce Commission is very clearcut and factual. Both of these copies have been sent to the field and if more copies are needed they are available.

With this knowledge, in 1955 I deprecated the displacement of our electric coaches in Denver by General Motors diesel buses. I notified the City Council, the Mayor, the Colorado Public Utilities Commission, and the Governor, and was thwarted by Dr. Cleere (Exhibit 23).

I then turned over all of my data on the toxicity of diesel exhaust to the United States Federal Trade Commission by which they could prove General Motors was practicing deception in selling their diesel buses by misrepresentation, by advertising and promoting the sale of their diesel buses on the basis that there were no harmful parts in their diesel buses' exhaust when they knew their diesel bus exhaust contained one-tenth of one per cent (954 P.P.M.) of toxic, smog-forming, anhydrous nitric acid gas (oxides of nitrogen). The U. S. Bureau of Mines R. I. Report 4032 of January 1947 shows that diesel exhaust contains 996 P.P.M. of NO_2.

I went to Washington and put the facts to Samuel L. Williams, chief prosecuting attorney for the United States Federal Trade Commission. He said, "All very well; if we filed a suit against General Motors, and the U. S. Bureau of Mines testified that there are no harmful parts in their diesel bus exhaust, it would collapse."

After two years of successful operation of my diesel mine locomotive in a Wyoming mine from 1942 to 1944, I

presented this data to the Colorado Commissioner of Mines, Fred Jones, and obtained permission for the Idarado Mining Company to use *one* diesel mine locomotive (Exhibit 24), which they operated safely from 1944 to 1947, when the U. S. Bureau of Mines sent a letter (Exhibit 25) to the Idarado Mining Company which they interpreted as permission to put in four more diesel mine locomotives over the head of Fred Jones, Colorado Commissioner of Mines, without my conditioners, by-passing the permission granted by Fred Jones in 1944 (Exhibit 24) for one diesel locomotive, with *disastrous results*. All this time, the U. S. Bureau of Mines maintained there were no harmful parts in General Motors diesel bus exhaust, so that General Motors diesel bus sales in our cities would not be impaired (Exhibit 22).

In 1953 the U. S. Bureau of Mines ordered one of my $9,000, 3-ton diesel mine locomotives, specifying that it be a duplicate of the six standard 3-ton diesel mine locomotives with limestone detoxifying conditioners I had sold to the U. S. Steel zinc mine in Jefferson City, Tennessee (Exhibit 10). I put up $400 for them to make tests and analyses of the exhaust, leading to their approval which they refused.

After seven months they found the answer to the quandary, why the U. S. Steel zinc mine air had less than 5 P.P.M. of oxides of nitrogen, whereas the Idarado mine air had over 100 P.P.M., when their colormetric method of analysis for the oxides of nitrogen from the exhaust of the diesel engine showed the same amount of oxides of nitrogen coming out of my conditioner with limestone as came out of a water-only Idarado scrubber which was

made from a drawing recommended by the U. S. Bureau of Mines.

My conditioner exhaust contained the same amount of oxides of nitrogen as $Ca(NO_3)_2 + 4\ H_2O$ as the diesel engine exhaust, *but their colormetric analysis could not distinguish the toxic oxides of nitrogen* (NO_2) *coming out of the diesel engine exhaust from the non-toxic oxides of nitrogen, calcium nitrate with four molecules of water of crystallization*—$Ca(NO_3)_2 + 4\ H_2O$—*which at* 100° *F., the temperature of the conditioner water, had the same vapor pressure as the water and therefore the detoxified oxides of nitrogen were exhausted out of the conditioner as vapor with the water vapor.*

Having put up $400, I expected, but they refused to give me any of the analytical results made in their Pittsburgs laboratory, hoping to use it to defeat my patent.

When Mr. James, head of the U. S. Bureau of Mines Pittsburgh testing laboratory, testified before Judge Druffel that test after test of my limestone conditioner showed that it did not take out the toxic oxides of nitrogen, as he stepped from the stand Judge Druffel, wise in the wiles of witnesses, asked him, "Did the U. S. Bureau of Mines ever approve a diesel mine locomotive with a limestone conditioner for use underground?" Mr. James answered, "Yes." Judge Druffel asked, "How many?" Mr. James replied, for two companies—Plymouth Locomotive Works and Gitman Brothers.

In 1953, after testing my unit, they refused me their approval. In 1956, using the same method, they granted approval to by competitors.

A letter from Congressman Powell (Exhibit 21) exposes this perfidy of usurped authority by the U. S. Bureau of Mines in stating they had no statutory right to aid and assist General Motors in buncoing the public out of their health and their money and me out of my patent, and stating: "I do know, however, that the Bureau of Mines never has had and does not now have any authority conferred by Federal statute to inspect mines other than coal mines nor to approve or disapprove the use of equipment in those mines."

Conclusion

Time is of the essence. I note in the proceedings before our Federal courts that Sam Sheppard was not forced to abide by the judgment of a ten-year-old decision in which this honorable Court decided he had not received a fair trial.

I plead that this honorable Court not consider the intervening time in this case, and that I be granted the right to a fair trial and given the right to demonstrate Exhibit "59" to a judge in the Tenth Circuit as I did in the Sixth Circuit.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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